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FISCAL IMPACT STATEMENT

LS 7001
BILL NUMBER: HB 1211

NOTE PREPARED: Jan 20, 2008
BILL AMENDED:

SUBJECT: Various Home Loan Matters.

FIRST AUTHOR: Rep. Murphy
FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

Revision of Sales Disclosure Form- The bill requires the Department of Local Government Finance (DLGF) to revise the sales disclosure form for real estate conveyances to include the application forms for the homestead credit and the mortgage property tax exemption.

Closing Agent Requirements- The bill requires a closing agent to: (1) provide to a customer, at least 48 hours before the closing of a home loan transaction, a form prescribed by the DLGF that describes certain property tax deductions and credits; (2) require the customer, at the time of the closing, to complete and sign either a sales disclosure form, in the case of a first lien purchase money mortgage transaction, or the application form for the mortgage property tax exemption, in the case of a refinancing; and (3) may collect and file the completed and signed form with the appropriate county official. The bill provides that at the time of the closing, the closing agent must: (1) inform the customer of certain other property tax deductions for which the customer may be eligible; (2) offer to provide the customer with the forms necessary for the person to claim the deductions; and (3) provide to the customer any forms requested by the customer.

Tax Credit- The bill provides a credit against the Financial Institutions Tax (FIT) or the Adjusted Gross Income (AGI) tax for a taxpayer that: (1) issues or brokers at least 25 home loans during the taxable year; and (2) incurs certain qualified home loan costs. The bill provides that the amount of the credit is the lesser of: (1) the taxpayer's qualified home loan costs; or (2) the amount of the taxpayer's tax liability.

Uniform Consumer Credit Code (UCCC) Regulation- The bill provides that: (1) purchase money mortgage transactions; and (2) refinancings of first lien mortgage transactions; are subject to regulation under the

UCCC.

Miscellaneous Provisions- The bill provides that not more than 25% of the credit service charge or loan finance charge for a mortgage transaction may be precomputed. The bill provides that for a purchase money mortgage transaction or the refinancing of a first lien mortgage transaction, the parties may contract for a delinquency charge of not more than 5% of the contracted payment amount. The bill provides that prepayment penalties and fees may not be charged with respect to a subprime mortgage transaction. The bill requires a creditor that offers a subprime mortgage transaction to establish an escrow account for the payment of real estate taxes and insurance owed in connection with the subprime mortgage.

Bond Posting- The bill requires a person regularly engaged as a creditor in mortgage transactions to post a bond of at least $300,000 with the Department of Financial Institutions (DFI).

48-Hour Preclosing Document Availability- The bill requires settlement service providers to make closing documents available to borrowers at least 48 hours before the closing.

Recommendation of Home Loan By Creditor- The bill prohibits a creditor from recommending or issuing a home loan to a prospective borrower if the creditor does not have reasonable grounds to believe the home loan is suitable for the prospective borrower based on a reasonable inquiry into the prospective borrower's creditworthiness. The bill provides that if a creditor conducts a reasonable inquiry, the creditor is not liable for determining that a home loan is suitable for a borrower, if the borrower later defaults on the home loan issued by the creditor.

Creditor Assistance Offer- The bill requires creditors to offer: (1) a temporary forbearance, subject to terms agreed upon by the creditor and the borrower; (2) a payment plan; or (3) an option for the refinancing, restructuring, or workout of existing indebtedness; whenever a home loan becomes 60 days past due.

Task Force- The bill requires various state agencies to form the Mortgage Lending and Fraud Prevention Task Force to coordinate the state's efforts to: (1) regulate the various participants involved in originating, issuing, and closing home loans; (2) enforce state laws and rules concerning mortgage lending practices and mortgage fraud; and (3) prevent fraudulent practices in the home loan industry and investigate and prosecute cases involving mortgage fraud. The bill requires the Securities Commissioner and the Director of the DFI to cooperate to determine the appropriate state agency or department to regulate a person subject to regulation, licensure, or registration under both the loan broker statute and the UCCC.

Repealer- The bill repeals provisions that exclude mortgage transactions from the UCCC.

Effective Date: Upon passage; July 1, 2008; January 1, 2009.

Explanation of State Expenditures: *Revision of Sales Disclosure Form*- This provision would require the DLGF to revise State Form 46021 (sales disclosure) to include State Forms 43709 (mortgage deduction from assessed valuation) and 5473 (homestead standard deduction). The revision of the forms would be of minimal expense to the DLGF as all three forms are currently available electronically. This provision would be effective July 1, 2008.

Tax Credit- Department of State Revenue (DOR)- The DOR will incur additional expenses to revise tax forms, instructions, and computer programs to reflect the proposed home loan cost tax credit. The DOR's current level of resources should be sufficient to implement this change. This provision would be effective

January 1, 2009.

Indiana Housing and Community Development Authority (IHCDA)- The IHCDA would have to certify home ownership education efforts by taxpayers seeking the tax credit established by the bill for the cost of such education efforts. The IHCDA's current level of resources should be sufficient to carry out the certifications.

Mortgage Lending and Fraud Prevention Task Force- The Task Force would consist of appointees from the Office of Secretary State (Securities Division), the Attorney General (Homeowner Protection Unit), the DFI, the Department of Insurance, the Indiana Real Estate Commission, and the Professional Licensing Agency via the Real Estate Appraiser Licensure and Certification Board. The Task Force would meet monthly to coordinate the state's efforts to regulate, enforce laws, and prevent fraudulent activities with respect to home loan matters.

The Task Force would report to the Legislative Council annually on their activities for the prior year relating to coordination efforts of home loan matters. Each agency involved may require additional administrative time to produce the required reports, as well as for meetings, including preparation, by the members of the Task Force. It is likely that each participating agency would be able to complete their administrative duties for the Task Force within their existing level of resources. This provision has an effective date of upon passage.

UCCC Regulation- Department of Financial Institutions Responsibilities- Under the bill, the DFI would be required to examine first mortgage lenders. Currently, the DFI only examines second mortgage lenders. Therefore, the DFI would be required to examine the holdings of first mortgage lenders including those second mortgage lenders that also make first mortgage loans. The impact of this provision on DFI expenditures and staff time is unknown as the number of potential lenders that would be regulated is unknown. The examination fees for the first mortgage lenders would be the same as other regulated lenders: $1,000 or a volume fee set by the DFI depending on which is applicable.

As of July 2, 2007, the DFI had four vacancies worth $205,000 in salary. The DFI reverted $133,127 from their operating account at the end of FY 2007. The DFI's dedicated fund appropriation for FY 2008 is $8.5 M.

Explanation of State Revenues: *UCCC Regulation-* Civil penalties in existing law would be applied as remedies for violations of this provision. In addition the bill would add a new civil penalty that could be assessed at the discretion of the DFI for UCCC violations under the bill. The amount of the civil penalty could not exceed $10,000 per violation.

Penalty Provision: For the provisions of the bill that fall under IC 24-9 (the state's Home Loan Practice Act), a violation of the Act constitutes a Class A misdemeanor. If violations of the new provisions of the bill (Inquiry of Creditworthiness, and Offering of Temporary Forbearance) were to result in additional court cases and fines are collected, revenue to both the Common School Fund (from fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class A misdemeanor is $5,000. However, any additional revenue would likely be small.

Current law provides for civil penalties for violation of an injunction against a violator of the Home Loan Practice Act. Civil penalties cannot exceed $10,000 per injunction violation.

Tax Credit- The potential reduction in state AGI tax and FIT revenue as a result of this provision is indeterminable, but could be significant. Creditors could begin taking advantage of the proposed tax credit after December 31, 2008, with the first reduction in revenue beginning during the second half of FY 2009. The impact would depend on the total number of creditors certified by the IHCDA for their home ownership education efforts.

Background Information-

Potential Universe of Eligible Creditors- There are approximately 580 FIT taxpayers, of which 359 are domiciled in Indiana. As of January 2008, the Securities Commission reported there were 939 registrants that broker home loans. Since July 2007, there have been 145 home loan broker exemptions granted with 25 in process. A report released during the fall of 2007 by the DFI stated that the Securities Commissioner had 1,271 mortgage brokers registered and 1,091 brokers without a registration from the Securities Division due to statutory exemption.

Credit Details- The provision would allow qualified creditors to take a tax credit for the cost of certain home ownership education efforts conducted by the creditor against either their AGI tax or FIT liabilities. The nonrefundable tax credit would be for creditors who issue or broker at least 25 home loans during the taxable year. The tax credit is equal to the entire cost of: (1) home ownership education efforts conducted by the creditor and certified by the IHCDA; and (2) contributions by the creditor to the Mortgage Foreclosure Counseling and Education Program administered by the IHCDA. Qualified home ownership education efforts include the following:

(1) Educational materials that inform borrowers about the features of, and risks associated with, the home loan products offered by the creditor, or the responsibilities and costs associated with home ownership in general.

(2) Home ownership counseling services designed to assist borrowers in meeting their obligations under a home loan.

The tax credit may be claimed by individuals, corporations, and pass through entities. For passthrough entities, the credit may be claimed by shareholders, partners, or members in proportion to their distributive income from the passthrough entity. The credit is not refundable. A taxpayer may carry over excess tax credits, but excess tax credits may not be carried back. Since this provision is effective beginning in tax year 2009, the fiscal impact could potentially begin in FY 2009, if qualifying taxpayers adjust their quarterly estimated tax payments. Revenue from the corporate AGI tax and the FIT is distributed to the state General Fund. The revenue from the individual AGI tax is deposited in the state General Fund (86%) and the Property Tax Replacement Fund (14%).

Educational Material Costs- The IHCDA currently uses a threefold pamphlet for foreclosure education. The printing cost per pamphlet ranges from $0.08 to $0.10 depending on the quantity produced. The IHCDA's development costs for the pamphlet are estimated to be $5,000.

Explanation of Local Expenditures: *Penalty Provision:* A Class A misdemeanor is punishable by up to one year in jail.

Explanation of Local Revenues: *Penalty Provision:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from court fees. However, any change in revenue would likely be small.

State Agencies Affected: IHCDA; DOR; Office of the Secretary of State Securities Division; DFI.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Stephanie Reeve, IHCDA; Jeff Bush, Securities Commission, Office of the Secretary of State; *Report Pursuant to HEA 1717 on the Feasibility of the Regulation of Mortgage Brokers by the Indiana Department of Financial Institutions, November 1, 2007;* John Schroeder & Dave Larson, DFI, OFMA 2004 Corporate Tax database.

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